

§ 23.7

Minority business enterprise or *MBE* means a small business concern, as defined pursuant to section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:

(a) Which is at least 51 per centum owned by one or more minorities or women or, in the case of a publicly owned business, at least 51 per centum of the stock of which is owned by one or more minorities or women; and

(b) Whose management and daily business operations are controlled by one or more such individuals.

MBE coordinator means the official designated by the head of the Department element to have overall responsibility for promotion of minority business enterprise in his/her Departmental element.

Noncompliance means the condition existing when a recipient or contractor has failed to implement the requirements of this part.

Primary recipient is a recipient who receives DOT financial assistance and passes some or all of this assistance on to another recipient.

Program means any undertaking by a recipient to use DOT financial assistance, and includes the entire activity any part of which receives DOT financial assistance.

Recipient means any entity, public or private, to whom DOT financial assistance is extended, directly or through another recipient for any program.

Secretary means the Secretary of transportation or any person whom he/she has designated to act for him/her.

Set-aside means a technique which limits consideration of bids or proposals to those submitted by MBEs.

[45 FR 21184, Mar. 31, 1980, as amended at 46 FR 60459, Dec. 10, 1981]

§ 23.7 Discrimination prohibited.

No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any contract covered by this part, on the grounds of race, color, national origin, or sex.

49 CFR Subtitle A (10–1–98 Edition)

Subpart B [Reserved]

Subpart C—Department of Transportation Financial Assistance Programs

§ 23.41 General.

(a) *Responsibilities of applicants and recipients.* (1) All applicants and recipients shall follow the requirements of § 23.43.

(2) Applicants and recipients in the following categories who will let DOT-assisted contracts shall implement an MBE program containing the elements set forth in § 23.45 (e) through (i). This program shall be submitted for approval to the DOT element concerned with the application for financial assistance or project approval.

(i) Applicants for funds in excess of \$250,000, exclusive of transit vehicle purchases, under sections, 3, 5, 9, 9A, 17 and 18 of the Urban Mass Transportation Act of 1964, as amended, and Federal-aid urban systems.

(ii) Applicants for planning funds in excess of \$100,000 under section 6, 8, 9 or 9A of the Urban Mass Transportation Act of 1964, as amended.

(iii) Applicants for Section 402 program funds of the National Highway Traffic Safety Administration;

(iv) Applicants for funds in excess of \$250,000 awarded by the Federal Aviation Administration to general aviation airports;

(v) Applicants for funds in excess of \$400,000 awarded by the Federal Aviation Administration to non-hub airports; and

(vi) Applicants for planning funds in excess of \$75,000 awarded by the Federal Aviation Administration.

(vii) Licensees or applicants for a license under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*).

(3) All applicants and recipients in the following categories who will let DOT-assisted contracts shall implement an MBE program containing all the elements set forth in § 23.45. The program shall be submitted for approval to the DOT element concerned with the application for assistance or project approval.

(i) Applicants for Federal-aid highway program funds;

(ii) Applicants for funds in excess of \$500,000, exclusive of transit vehicle purchases, under sections 3, 5, 9, 9A, 17 and 18 of the Urban Mass Transportation Act of 1964, as amended, and Federal-aid urban systems;

(iii) Applicants for planning funds in excess of \$200,000 under section 6, 8, 9 and 9A of the Urban Mass Transportation Act of 1964, as amended.

(iv) Applicants for funds in excess of \$500,000 awarded by the Federal Aviation Administration to large, medium and small hub airports; and

(v) Applicants for financial assistance programs, including loan guarantees, by the Federal Railroad Administration and the U.S. Railway Association.

(b) *Approval requirement.* Applications and funding agreements are signed and authorizations to proceed are approved only after the applicant's MBE program has been approved by the Departmental element. This requirement applies to applications, authorizations to proceed requested by Federal-aid highway program recipients, and requests for draw downs from the U.S. Railway Association submitted 90 days or more following the effective date of this part.

(c) *Effect of agreement.* The MBE program prepared by the applicant and the commitment made by the applicant to carry out the MBE program is incorporated into and becomes part of this agreement and subsequent financial assistance agreements. The agreement between the Department and the recipient shall contractually bind the recipient to the commitments made in the MBE program, as approved by the Department. Failure to keep these commitments shall be deemed noncompliance with this part. Once submitted and approved, an MBE program is applicable to all DOT-assisted contracts solicited and let by the applicant after the approval date of the MBE program regardless of the approval date of the grant or project under which the contracts are let.

(d) *Other MBE programs.* (1) Applicants meeting the criteria set forth in paragraphs (a)(2) and (3) of this section who have formulated MBE programs under previous requirements of DOT or other agencies shall revise these pro-

grams to conform to the requirements of this part prior to the approval of their next application.

(2) An MBE program approved by one Departmental element is acceptable to all Departmental elements. Applicants having an approved MBE program are not required to resubmit the program or to produce a new program for future applications, as long as all requirements for approval continue to be met and implementation of the program is achieving compliance. The Departmental element reassesses its approval of the MBE program of continuing recipients at least annually.

(e) *Transit vehicle manufacturers.* Transit vehicle manufacturers who wish to bid on UMTA-assisted transit vehicle procurement contracts shall have a UMTA-approved MBE program. Each UMTA recipient shall require these manufacturers to certify that they have such a program as a condition for bidding on UMTA-assisted contracts.

(f) *Exemptions.* The head of the Departmental element may, under appropriate circumstances, and with the concurrence of the Secretary, grant deviations or exemptions from this subpart. A request for deviation or exemption from this subpart shall be in writing and shall include a showing as to how the particular situation is exceptional and how the modified program complies substantially with this part. If the applicant asserts that State or local law prohibits it from including a particular provision in its program, the applicant shall provide copies of all legal citations supporting the claim.

[45 FR 21184, Mar. 31, 1980, as amended at 48 FR 33444, July 21, 1983]

§23.43 General requirements for recipients.

(a) Each recipient shall agree to abide by the statements in paragraphs (a) (1) and (2) of this section. These statements shall be included in the recipient's DOT financial assistance agreement and in all subsequent agreements between the recipient and any subrecipient and in all subsequent DOT-assisted contracts between recipients or subrecipients and any contractor.